

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**CHARLES F. CARDONE,**

**Plaintiff,**

**v.**

**POLICE CHIEF KEITH BANKS,  
POLICE OFFICER PFC R. TYLER  
WHITMAN, and POLICE OFFICER  
SGT. BENNY MITCHELL,**

**Defendants.**

**Civ. No. 06-152-KAJ**

**Jury Trial Requested**

**DEFENDANT PFC R. TYLER WHITMAN'S ANSWER WITH  
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant, PFC R. Tyler Whitman, by and through his counsel, Marshall, Dennehey, Warner, Coleman & Goggin, hereby responds to Plaintiff's Complaint as follows:

**STATEMENT OF CLAIM**

1. To the extent that Plaintiff's Complaint (Civ. No. 06-152-KAJ) is drafted as a broad narrative, it is impossible to respond to Plaintiff's Complaint by numbered paragraph.
2. It is admitted upon information and belief that Plaintiff was in the 7-11 store on Rehoboth Avenue on September 7, 2004 at approximately 2100 hours (9:00 p.m.).
3. It is denied that Plaintiff was punched in the head.
4. It is admitted that, after some discussion between Plaintiff and Defendant, that Plaintiff was taken to the floor of the store and handcuffed.
5. Defendant is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's averment that he did not know who or what it was that tried to take head off. Defendant denies that he tried to take Plaintiff's head off.

6. Defendant denies trying to break Plaintiff's left arm at the shoulder and kneeling on Plaintiff's head in an attempt to crush Plaintiff's skull.

7. Defendant denies that Plaintiff was not aware that he was being placed under arrest. Defendant further denies that Plaintiff was not read his Miranda rights.

8. Defendant denies that he attempted to injure and/or kill Plaintiff.

9. Defendant admits that there were other police officers present at the time of Plaintiff's arrest. Defendant, however, denies as stated the following sentence from Plaintiff's narrative Complaint: "there was a female officer who witnessed the above mentioned crime, but I do not know her name."

**WHEREFORE**, Defendant seeks dismissal with prejudice with costs assessed against Plaintiff.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a cause of action upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6).

#### **SECOND AFFIRMATIVE DEFENSE**

Defendant is entitled to absolute and/or qualified immunity.

#### **THIRD AFFIRMATIVE DEFENSE**

No action or conduct of Defendant violated any statutory or Constitutional rights of Plaintiff.

#### **FOURTH AFFIRMATIVE DEFENSE**

Defendant herein asserts all other defenses available under the Civil Rights Act of 1871.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's request for punitive damages is barred by state and federal law.

**SIXTH AFFIRMATIVE DEFENSE**

The nature of Plaintiff's arrest was necessary and proper in light of Plaintiff's resisting the arrest.

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

*/s/ Daniel A. Griffith*

DE ID No. 4209

---

DANIEL A. GRIFFITH, ESQ.  
DE Bar ID No. 4209  
1220 N. Market Street, 5<sup>th</sup> Floor  
P.O. Box 8888  
Wilmington, DE 19899-8888  
(302) 552-4317  
E-mail: [dagriffith@mdwcg.com](mailto:dagriffith@mdwcg.com)  
Attorney for Defendant  
PFC R. Tyler Whitman

Date: September 18, 2006

**CERTIFICATE OF SERVICE**

I, Daniel A. Griffith, Esquire hereby certify that on this 18<sup>th</sup> day of September, 2006, two (2) true and correct copies of Defendant, PFC R. Tyler Whitman's Answer to Plaintiff's Complaint with Affirmative Defenses, were forwarded to the below named addressee by first-class mail:

Charles F. Cardone SBI# 098159  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977  
Pro Se

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

*/s/ Daniel A. Griffith*

DE ID No. 4209

---

DANIEL A. GRIFFITH, ESQ.  
DE Bar ID No. 4209  
1220 N. Market Street, 5<sup>th</sup> Floor  
P.O. Box 8888  
Wilmington, DE 19899-8888  
(302) 552-4317  
E-mail: [dagriffith@mdwcg.com](mailto:dagriffith@mdwcg.com)  
Attorney for Defendant  
PFC R. Tyler Whitman